



**CITY OF SUNNYVALE
REPORT
Administrative Hearing**

August 13, 2008

SUBJECT: **2008-0571:** Application for related proposals located at **1563 Benton Street** (at Kensington Ave.) in an R-0 (Low Density Residential) Zoning District.

Motion **Variance** from Sunnyvale Municipal Code section 19.34.040 to allow a deck taller than 18" with zero setback in the reducible front yard where a 9' setback is required.

Motion **Use Permit** to allow an approximately 11' tall fence along the reducible front yard.

REPORT IN BRIEF

Existing Site Conditions Single-family home

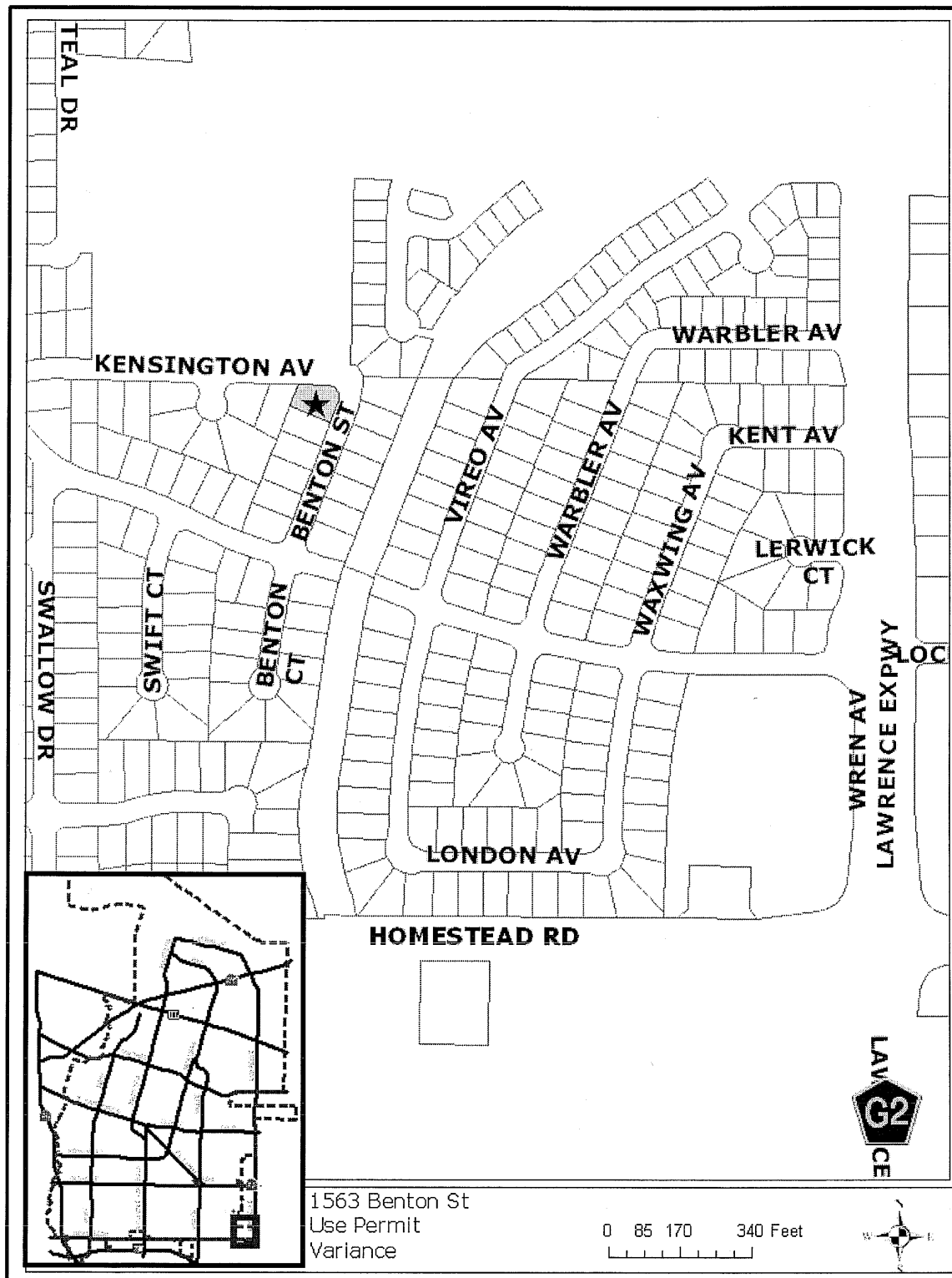
Surrounding Land Uses

North	Laurelwood Elementary School, Santa Clara
South	Single-family home
East	Single-family homes (across Benton Street)
West	Single-family home

Issues Neighborhood compatibility of fence height
Variance findings

Environmental Status A Class 1 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines.

Staff Recommendation Deny the Variance
Approve the Use Permit with conditions



PROJECT DATA TABLE

	EXISTING	PROPOSED	REQUIRED/ PERMITTED
General Plan	Residential Low-Density	Same	Residential Low-Density
Zoning District	R-0	Same	R-0
Lot Size (s.f.)	6,600	Same	6,000 min.
Gross Floor Area (s.f.)	2,761	Same	2,970 max.
Lot Coverage (%)	41.8%	Same	45% max.
Floor Area Ratio (FAR)	41.8%	Same	45% max. without PC review
Setbacks (Facing Property)			
Front	20' (to front of home)	Same	20' min.
Left Side	11' (to side of home)	Same	4' min.
Right Side (Reducible Front)	11' (to side of home)	0' (to deck)	9' min.
Rear	30' (to rear of home)	21' (to deck)	20' min.



Starred items indicate deviations from Sunnyvale Municipal Code requirements.

ANALYSIS**Description of Proposed Project**

The proposed project has two aspects: a new deck and a new fence along the north property line along Kensington Avenue. The proposed raised deck would be located in the required reducible front yard setback and would have a height of approximately 6' 1" above the top of the adjacent curb (at the level of the home's finished floor). The applicant is requesting a Variance to allow the deck to be located at the property line with no setback where a 9' setback is required. (Note that the project plans submitted by the applicant, Attachment D, incorrectly show the property line located at the back of the sidewalk. The actual property line is 5' 6" behind the back of the sidewalk. Due to this error, the location of the corner vision triangle is also shown incorrectly on the plans. It appears a small portion of the proposed deck would be located in the corner vision triangle as currently proposed.)

The proposed fence along the reducible front yard would consist of 9' 9" of solid wood boards and 1' of lattice resulting in a height of approximately 10' 9" as measured from the top of the adjacent curb. The interior height of the fence would be approximately 8' 3" as measured from the current grade of the lot at the property line, approximately 6' 6" as measured from the average grade of the rear yard, and approximately 4' 8" as measured from the level of the proposed deck (see Attachment D – Plans).

Background

There are no previous Planning applications related to the subject site.

Environmental Review

A Class 3 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines. Class 3 Categorical Exemptions include construction of small structures such as patios and fences.

Use Permit/Variance

Site Layout: The subject site is a corner lot located on Benton Street at Kensington Avenue. The size of the lot is 6,600 square feet, where 6,000 square feet is the minimum for lots in the R-0 Zoning District. The lot is approximately 77' wide at the front setback, where 62' is the minimum for corner lots in the R-0 Zoning District. At the rear, the lot narrows to a width of approximately 60' at the rear setback and 51' at the rear property line. (These widths are estimated, as the plans submitted by the applicant are not to scale.) The finished grade of the subject property is significantly higher than the level of the adjacent streets. The property's grade varies, but the average grade of the rear yard appears to be approximately 4' 3" above the top of the adjacent curb.

The existing single-story home takes access from Benton Street, with the reducible front yard along Kensington Avenue. There is an existing wood fence located near the property line with a height varying from 7' to 10'. Portions of the fence appear to be many years old and most likely pre-dated current permit requirements. Other sections appear new and seem to have been constructed without permits. The existing fence is set back 4' 6" from the back of the sidewalk, therefore it is encroaching in the public right-of-way (which ends 5' 6" behind the back of the sidewalk).

Along the reducible front yard, the applicant has poured a concrete retaining wall and walkway area which connects to the public sidewalk. The applicant states that this area will be located beneath the floor of the proposed deck and will be used for storage of tools and other materials. The applicant proposes

gates to enclose this area, which can be opened to allow the applicant to access his stored materials from the sidewalk along Kensington Avenue. No permits were obtained for construction of this storage area. A portion of this storage area appears to be encroaching in the public right-of-way.

Compliance with Development Standards/Guidelines: There are several proposed and existing structures on the property (fence, deck, exterior stairs, and concrete storage area) which have not previously been reviewed for compliance with City standards. Each of these structures is addressed separately below.

Fence

Fences greater than 7' tall in the reducible front yard require a Use Permit. A Building Permit is also required for any fence exceeding 6' in height. Sunnyvale's Single Family Home Design Techniques state the following:

Side fencing may be solid wood boards, but open lattice work segments at the top of the wall are softer in appearance and encouraged. For side property lines abutting a public street, low fencing is encouraged. However, when privacy is at issue, fences should be constructed of wood up to a maximum height of six feet with at least the top twelve inches constructed of wood lattice to soften the visual appearance of the fence top. (item 3.11.G).

The proposed fence consists of solid wood boards topped with an open lattice element as recommended in the Design Techniques. However, the height of the proposed fence is significantly taller than the maximum height recommended in the Design Techniques. This is due in part to the grade of the rear yard, which is approximately 4' 3" higher than the top of curb. Where grade differential is an issue, staff practice has been to allow a fence height that would achieve 6' of privacy as measured from the interior grade of the property. The current proposal would result in an interior height of 6' 6" as measured from the interior grade of the rear yard, but only 4' 8" as measured from the top of the raised deck proposed by the applicant. However, staff does not believe the top of the deck should be considered as the level of the rear yard for the purpose of calculating fence height. The deck's height is not an existing constraint on the property (such as grade), but rather condition being created by the applicant. Instead, staff recommends using the average grade of the rear yard as the interior grade for the purpose of measuring the amount of privacy provided. Consistent with staff practice and previous Planning actions, staff recommends requiring the fence to be lowered to a maximum height of 6' as measured from the level of the rear yard, which results in a height of 10' 3" as measured from the top of the adjacent public curb (Condition of Approval #3A).

Staff notes that the fence's height, its location adjacent to the public sidewalk, and the current absence of landscaping in front of the fence have the potential

to create a fortress-like effect along Kensington Avenue (see Attachment E – Photographs). The applicant proposes to plant shrubs and other low landscaping in the setback between the fence and the sidewalk to match his existing landscaping in the public right-of-way along the front of the property. While the existing landscaping is attractive and well-maintained, it is relatively low in height and will not provide any screening or visual softening of the fence itself. Staff notes that in previous cases where taller reducible yard fences have been approved, conditions of approval have been added to require vines or other tall landscaping to cover 40% of the front of the fence within 6 months. Staff recommends Condition of Approval #3D to soften the appearance of the fence from the street and remain consistent with previous Planning actions.

Deck

Decks taller than 18” as measured from the top of the nearest adjacent curb are required to meet all setbacks for the Zoning District. The proposed deck in the reducible front yard will be 5’ 6” tall as measured from the top of curb, therefore it requires a 9’ setback. The proposed deck will be located at the property line with zero setback. The applicant is requesting a Variance from the required setback to allow this construction, as it is not compliance with current development standards (see discussion below).

Concrete Storage Area

Retaining walls such as the walls of the concrete storage area require Building permits if the total height from the top of the wall to the bottom of the footings is 4’ or greater. When such structures are located near the foundation of a home, footings may require additional depth to provide sufficient support. The applicant is currently working with the Building Division and Structural Engineering Division to determine whether permits are required to legalize the concrete storage area. Condition of Approval #2C requires the applicant to obtain any required permits from the Building Division, or demolish the structure if permits cannot be issued, within 60 days.

Stairs

The Building Division also notes that there are stairs installed along the reducible front yard near the corner of Benton Street and Kensington Avenue which do not meet ADA requirements. Staircases having 4 or more risers are required to have hand rails on both sides. Condition of Approval #2D requires the applicant to work with the Building Division to bring these stairs into ADA compliance within 60 days.

Variance Findings: In order to approve a Variance for the proposed deck, findings must be made that there are exceptional circumstances related to the property or use which deprive the property owner of reasonable use; that the proposed project will not be detrimental to adjacent properties or uses; and

that the granting of the Variance will not constitute a special privilege not enjoyed by others in the Zoning District (see Attachment A).

The applicant has addressed the three required findings for a Variance in Attachment F - Justifications. A summary of the applicant's justifications is provided below. Staff's comments regarding each justification are provided in italics.

1. The subject lot is wide at the front, but narrows significantly at the back to a width of 51'. As a result, the width of the reducible yard between the home and the property line also narrows significantly from approximately 18' at the front of the home to only 9' at the rear of the home. If the lot had the same width from the front of the property to the rear, there would be sufficient space to construct a deck meeting the 9' reducible setback.

Staff comment: The property is larger than the minimum standard for the Zoning District, and is significantly wider at the front than the standard for the Zoning District. The property is somewhat irregular in shape and narrows at the rear, but this is not uncommon for corner lots. The subject home appears to be approximately 50' wide. If the lot had a consistent width of 62' (the standard for the Zoning District) from the front to the rear, the home itself would not be able to meet the combined side and reducible yard setbacks of 13', and there would still be no additional space for a deck. The lot would have to be both consistent in width and wider than the standard for the Zoning District in order to allow a deck which meets setbacks. In addition, the proposed deck has a width ranging from approximately 9' at the rear of the home to 18' at the front of the home. The typical side yard for properties in the R-0 Zoning District is 6', so even if no deck setback were required, the widest side deck which could be enjoyed by the majority of property owners in the Zoning District would be 6'. While a deck with a width of 9' to 18' may be desirable, it is neither common nor is it considered by staff to be a standard expectation for a residential property. As a result of the above, staff does not believe the property owner is being deprived of a privilege enjoyed by other property owners in the Zoning District.

2. The subject lot has a significant slope along the reducible yard. The height of decks in the reducible yard is measured from top of curb, and the resulting height is over 6' due to the slope of the yard. Decks over 18" in height must meet setbacks; however, decks measuring less than 18" in height can extend to the property line with no setback. The applicant states that the property's grade deprives him of the ability to extend the deck to his property line, which would be permitted on other lots in the Zoning District having flat grades.

Staff comment: Staff concurs that if the property had a flat grade, the proposed deck would not have to meet setbacks. Raised grades are common in the surrounding neighborhood, so other similarly situated property owners would also have to meet the required setbacks for any deck located along the street. Staff does not believe the applicant is being deprived of a privilege commonly enjoyed by other property owners in the Zoning District.

3. Although there may appear to be an alternative to reduce the height of the deck by re-grading the reducible yard, this is not a feasible option. Not only is re-grading near the home's foundation potentially unsafe, but the level of the deck would then be significantly below the home's finished floor (which is at a height of about 6' 1" above the top of the adjacent curb). Steps would have to be added leading from the proposed side door of the home down to the deck. Given current Building Code requirements for length and height of step risers, the required steps would take up the majority of the width of the reducible yard and could, themselves, fail to meet required setbacks.

Staff comment: Staff concurs with this assessment of the constraints on the property. However, staff does not consider a 9' to 18' wide side deck to be an essential use of a residential property, and does not believe the property owner is being deprived of a privilege enjoyed by other property owners in the Zoning District.

4. Although there is space available at the rear of the home, the applicant does not wish to construct the deck there because he hopes to build an addition to the rear of the home in the future and does not want to have to remove the deck at that time.

Staff comment: Any future addition would require sufficient setbacks which are intended to provide open space on the property. Use of this required open space should be pursued before using an area that doesn't meet setback requirements.

5. The applicant notes that other Variances have been approved due to irregular lot shape, and believes his Variance should be similarly approved. He references the Planning Commission minutes for a previously-approved Variance (Attachment F).

Staff comment: The previous project referenced by the applicant is a Variance from the combined side setback for an interior (not a corner) lot; therefore staff does not believe it is applicable to the current proposal. The applicant believes it is relevant because a finding was made to allow a Variance due to irregular lot shape. Although irregular lot shape is one factor that may contribute to the

granting of a Variance, it may not be sufficient in itself. A large percentage of properties in the City have a shape that is somewhat irregular. The question must be whether that shape deprives the property owner of benefits commonly enjoyed by other properties in the Zoning District. In this case, staff does not believe that finding can be made (see #1 above).

6. The proposed deck will be a positive addition to the property's value and to the neighborhood, as it will enhance the appearance and usability of the home. It will not have a negative impact on surrounding properties. There is only one neighboring property adjacent to the deck area (to the rear) and this property will be protected from any privacy impacts because it has a similar grade as well as tall landscaping to provide screening.

Staff comment: Since the proposed deck will be located within a fenced area, it will not be visible to the street or surrounding properties. As a result, staff concurs that the proposal will not be detrimental to surrounding properties or uses (Variance finding #2 in Attachment A). However, staff was not able to make Variance findings #1 and #3, which are also required for the granting of a Variance.

Expected Impact on the Surroundings: The proposed fence is located adjacent to the public street and has the potential to have a visual impact on the streetscape and the overall neighborhood. The height of the proposed fence, its location directly adjacent to the edge of the sidewalk, and the current lack of landscaping in front of the fence may create a fortress-like appearance which is not consistent with the Single Family Home Design Techniques. Staff recommends Condition of Approval #3A to reduce the height of the fence and Condition of Approval #3D to soften the appearance of the fence. As conditioned, the proposed fence would not have a negative impact on the surrounding neighborhood. The proposed deck would be located behind the fence and would not be visible from the street or adjacent properties, therefore it would have a negative impact on the surrounding neighborhood.

Fiscal Impact

No fiscal impacts other than normal fees and taxes are expected.

Public Contact

Notice of Public Hearing	Staff Report	Agenda
<ul style="list-style-type: none">• Published in the <i>Sun</i> newspaper• Posted on the site• 6 notices mailed to property owners and residents adjacent to the project site	<ul style="list-style-type: none">• Posted on the City of Sunnyvale's Web site• Provided at the Reference Section of the City of Sunnyvale's Public Library	<ul style="list-style-type: none">• Posted on the City's official notice bulletin board• Posted on the City of Sunnyvale's Web site

Staff has not received any public contacts related to the subject application. However, the applicant has submitted a petition signed by neighboring property owners (Attachment G) in support of his proposal.

Conclusion

Use Permit Findings, General Plan Goals, and Conditions of Approval: Staff was able to make the required Findings to approve the Use Permit for the fence with conditions, based on the justifications provided by the applicant. Recommended Findings and General Plan Goals for the Use Permit are located in Attachment A. Recommended Conditions of Approval for the Use Permit are located in Attachment B.

Variance Findings, General Plan Goals, and Conditions of Approval: Staff was not able to make the required Findings for the Variance (Attachment A) and is therefore recommending denial of the Variance for the proposed deck. If the Administrative Hearing Officer is able to make the Findings to approve the Variance, staff is recommending the Conditions of Approval in Attachment C.

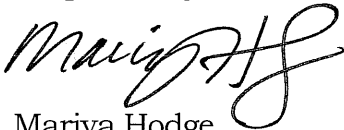
Alternatives

1. Approve the Use Permit with the conditions listed in Attachment B.
2. Approve the Use Permit with modified conditions.
3. Deny the Use Permit.
4. Approve the Variance with the conditions listed in Attachment C.
5. Approve the Variance with modified conditions.
6. Deny the Variance.

Recommendation

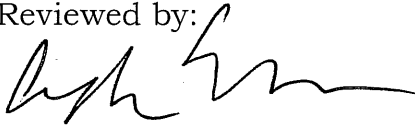
Staff recommends Alternatives 1 and 6 (approve the Use Permit with conditions and deny the Variance).

Prepared by:



Mariya Hodge
Project Planner

Reviewed by:



Andrew Miner
Principal Planner

Attachments:

- A. Recommended Findings
- B. Recommended Conditions of Approval – Use Permit
- C. Recommended Conditions of Approval – Variance
- D. Site Plans, Architectural Plans, and Parcel Information
- E. Photographs of the Subject Site
- F. Project Justifications Submitted by the Applicant
- G. Signatures of Neighboring Property Owners Submitted by the Applicant

Recommended Findings - Use Permit

Goals and Policies that relate to this project are:

Land Use and Transportation Action Statement - N1.1.1 – *Limit the intrusion of incompatible uses and inappropriate development into city neighborhoods.*

Single Family Home Design Techniques - 3.11.G – *Side fencing may be solid wood boards, but open lattice work segments at the top of the wall are softer in appearance and encouraged. For side property lines abutting a public street, low fencing is encouraged. However, when privacy is at issue, fences should be constructed of wood up to a maximum height of six feet with at least the top twelve inches constructed of wood lattice to soften the visual appearance of the fence top.*

1. The proposed use attains the objectives and purposes of the General Plan of the City of Sunnyvale. *(Finding met for reduced height with setback and landscaping)*
2. The proposed project will ensure that the general appearance of proposed structures, or the uses to be made of the property to which the application refers, will not impair either the orderly development of, or the existing uses being made of, adjacent properties. *(Finding met for reduced height with setback and landscaping)*

The proposed 10' 9" fence located along the public street has the potential to create a fortress-like effect which may detract from the character of the surrounding neighborhood. Sunnyvale's Single Family Home Design Techniques encourage the use of low fencing with a height of no more than 6 feet. Where grade differential is an issue, such as on the subject site, the practice has been to allow a fence height that achieves 6' of privacy from the interior grade of the yard. Consistent with this practice, the conditions of approval require the height of the fence to be reduced to 10' 3" from the top of curb and 6' from the interior grade of the rear yard. Although the appellant proposes landscaping in front of the fence, it would consist of low shrubs which would not screen the front of the fence. The visual impacts of a 10' fence located along the street sidewalk are too significant to be fully mitigated by this type of landscaping. As a result, the conditions of approval require tall landscaping to be planted in front of the fence. As conditioned, the proposed fence would provide the property owner with sufficient privacy in the rear yard without having a detrimental impact on the streetscape or surrounding properties.

Recommended Findings - Variance

1. Because of exceptional or extraordinary circumstances or conditions applicable to the property, or use, including size, shape, topography, location or surroundings, the strict application of the ordinance is found to deprive the property owner or privileges enjoyed by other properties in the vicinity and within the same zoning district. (*Finding not made*)

The property is larger than the minimum standard for the Zoning District, and is significantly wider at the front than the standard for the Zoning District. The property is somewhat irregular in shape and narrows at the rear, but this is not uncommon for corner lots. In addition, the width of the proposed deck is significantly greater than the width of a side deck that could be achieved by the property owners with lots of standard sizes and shapes in the Zoning District. As a result, the size and shape of the lot does not constitute an exceptional circumstance depriving the property owner of privileges enjoyed by other properties in the Zoning District. The property has an average grade several feet above the level of the adjacent public curb, and if the property had a flat grade, the proposed deck would not have to meet setbacks. This is a constraint created by the lot's topography. However, raised grades are common in the surrounding neighborhood, so other similarly situated property owners would also have to meet the required setbacks for any deck located along the street. As a result, the topography of the lot does not deprive the property owner of privileges enjoyed by other properties in the Zoning District.

2. The granting of the Variance will not be materially detrimental to the public welfare or injurious to the property, improvements or uses within the immediate vicinity and within the same zoning district. (*Finding made*)

The proposed deck would be located within a fenced area and would not be visible to the street or surrounding properties. Although the deck would be significantly higher than the level of the adjacent public curb, it would not be likely to result in visual or privacy impacts. There is only one adjacent property near the area of the deck (at 1126 Kensington Avenue), and this property would not be impacted by the deck as it has a similar grade in the rear yard as well as tall landscaping along the shared property line. The proposed deck would not be detrimental to surrounding properties or uses.

3. Upon granting of the Variance, the intent and purpose of the ordinance will still be served and the recipient of the Variance will not be granted special privileges not enjoyed by other surrounding property owners within the same zoning district. (*Finding not made*)

Granting the Variance would allow the property owner to enjoy a 9' to 18' wide side deck, which is not a privilege enjoyed by other surrounding property owners in the Zoning District. The Variance would also allow the applicant a deck adjacent to the street with no setback and with a height of over 6' above the top of curb, which is not a privilege enjoyed by other surrounding property owners in the Zoning District. The applicant has reasonable alternatives to construct a smaller deck in an alternate location on the property, which would be consistent with the options enjoyed by other property owners in the Zoning District. As a result, this finding cannot be made. Granting the Variance would constitute a special privilege for the applicant which is not enjoyed by other surrounding property owners within the same Zoning District.

Recommended Conditions of Approval - Use Permit

In addition to complying with all applicable City, County, State and Federal Statutes, Codes, Ordinances, Resolutions and Regulations, Permittee expressly accepts and agrees to comply with the following conditions of approval of this Permit:

Unless otherwise noted, all conditions shall be subject to the review of approval of the Director of Community Development.

1. GENERAL CONDITIONS

- A. The project shall be in conformance with the plans approved at the public hearing(s). Minor changes may be approved by the Director of Community Development. Major changes require approval at a public hearing.
- B. The Conditions of Approval shall be reproduced on a page of the plans submitted for any Building permits for this project.
- C. The Use Permit for the use shall expire if the use is discontinued for a period of one year or more.
- D. The Use Permit shall be null and void two years from the date of approval by the final review authority at a public hearing if the approval is not exercised, unless a written request for an extension is received prior to expiration date.

2. OBTAIN OTHER PERMITS

- A. Within 60 days of the date of approval of this Use Permit by the final review authority, obtain Building Permits and complete demolition of the existing unpermitted fence located in the reducible yard.
- B. Obtain Building Permits for installation of the new fence prior to any construction work.
- C. Consult with the Building Safety, Structural, and Engineering Divisions to determine whether the existing concrete storage area may remain. Within 60 days of the date of approval of this Use Permit by the final review authority, obtain any required Building and/or encroachment permits for the existing storage area, or remove the storage area if not permitted.
- D. Within 60 days of the date of approval of this Use Permit by the final review authority, obtain any required Building Permits and complete all required modifications to bring the stairs at the corner of the property into compliance with ADA requirements.

3. FENCES

- A. The height of the fence shall be reduced to no more than 6' as measured from the interior grade of the rear yard, resulting in a height of no more than 10' 3" as measured from the top of the adjacent public curb.
- B. The fence shall be located at the property line, at least 5' 6" behind the back of the sidewalk. No portion of the fence may extend into the public right-of-way.
- C. No portion of the fence shall be located in the 40' corner vision triangle. Note that the corner vision triangle is measured from property lines, not from the edge of the sidewalk as indicated on the plans submitted for review.
- D. Trees, vines, or other permanent landscaping with in-ground irrigation shall be planted in the setback areas in front of the fence to soften the appearance of the fence and screen it from public view. Landscaping shall be planted and maintained to achieve screening of approximately 40% of the front of the fence within 6 months.

Recommended Conditions of Approval - Variance

In addition to complying with all applicable City, County, State and Federal Statutes, Codes, Ordinances, Resolutions and Regulations, Permittee expressly accepts and agrees to comply with the following conditions of approval of this Permit:

Unless otherwise noted, all conditions shall be subject to the review of approval of the Director of Community Development.

1. GENERAL CONDITIONS *(in addition to those recommended above for the Use Permit)*

- E. The Variance for the use shall expire if the use is discontinued for a period of one year or more.
- F. The Variance shall be null and void two years from the date of approval by the final review authority at a public hearing if the approval is not exercised, unless a written request for an extension is received prior to expiration date.

2. OBTAIN OTHER PERMITS *(in addition to those recommended above for the Use Permit)*

- E. Obtain Building Permits for installation of the deck prior to any construction or demolition work.

4. DECK

- A. The deck may extend to the property line, 5' 6" behind the back of the sidewalk. No portion of the deck may extend into the public right-of-way.
- B. No portion of the deck shall be located in the 40' corner vision triangle. Note that the corner vision triangle is measured from property lines, not from the edge of the sidewalk as indicated on the plans submitted for review.

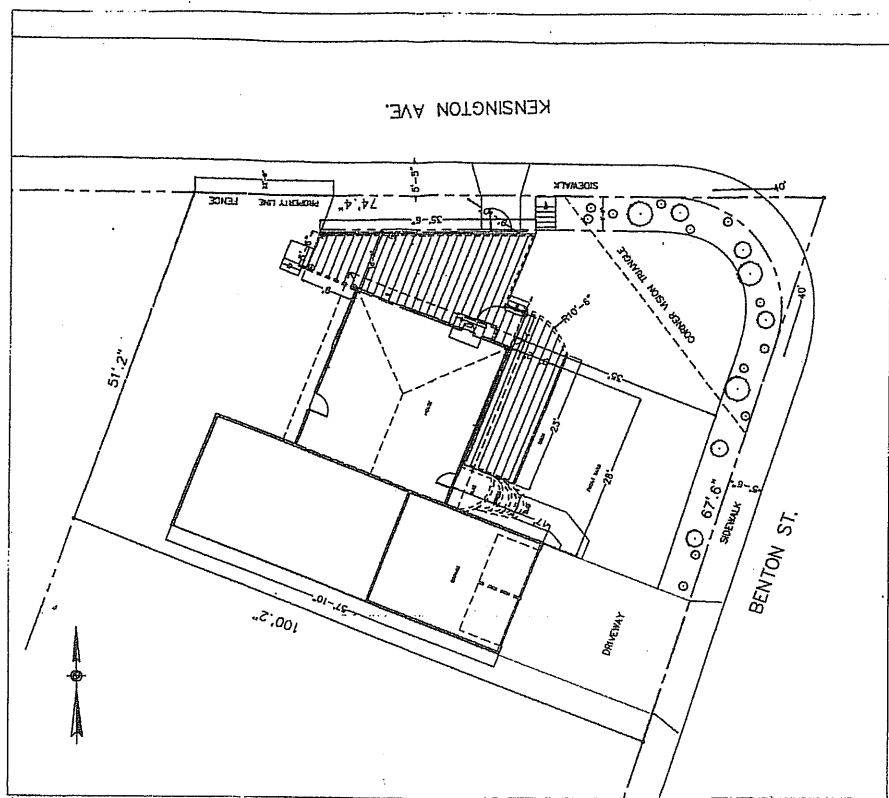
Attachment D

Site Plans, Architectural Plans, and Parcel Information

REV 1	BY:
0-12-07	

**Id Design
& Drafting Services**
Drawn by,
Javier Mendez
Phone: (831) 623-1278
Address:
P.O. Box 38
San Juan Bautista,
CA 95045

APN# 313-33-009
ADDRESS: 1563 BENTON CT. SUNNYVALE, CA
OWNER: BILL & DAPHNE WELLS
PHONE#: (408) 248-1127



~~SCALE: 1"=10'~~
Not to scale

PROJECT DATA
ADDRESS: 1563 BENTON CT. SUNNYVALE, CA 94087
PROJECT: WRAP AROUND DECK FRONT AND SIDE OF HOUSE
OWNERS: BILL WEILS
CONTRACTOR: OWNER
APN NUMBER: 313-33-009
LOT#: 9
OCCUPANCY: R-3
LOT SIZE: 6568.0 SQ. FT.
LOT COVERAGE: 40%

THIS PROJECT SHALL COMPLY WITH THE 2001 CBC-CPC-CMC 2004 CEC-, 2000 UPC-UMC-, 2002 NEC, 1997 UBC. ALL 2005 ENERGY EFFICIENCY REQUIREMENTS & MANDATORY MEASURES.



SHEET INDEX

1. SITE PLAN
2. PIER & PO
3. FLOOR JOIS
4. ELEVATION

SCOPE OF WORK:
NEW DECK TO WRAP
AROUND FRONT & SIDE OF
HOUSE. REPLACE WINDOW
WITH NEW SLIDING GLASS
DOOR AT NORTH SIDE OF
HOUSE TO ACCESS SIDE
DECK.

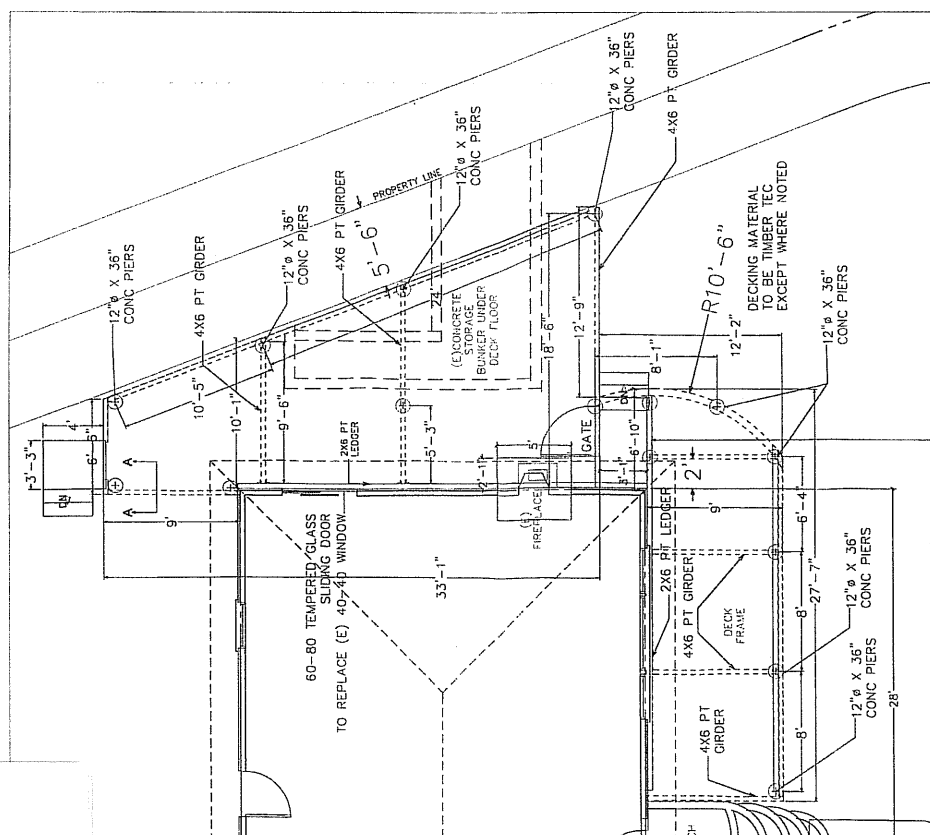
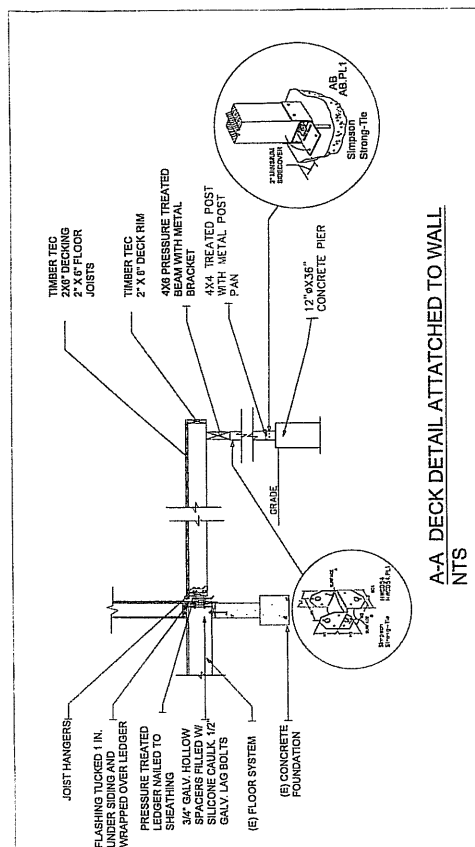
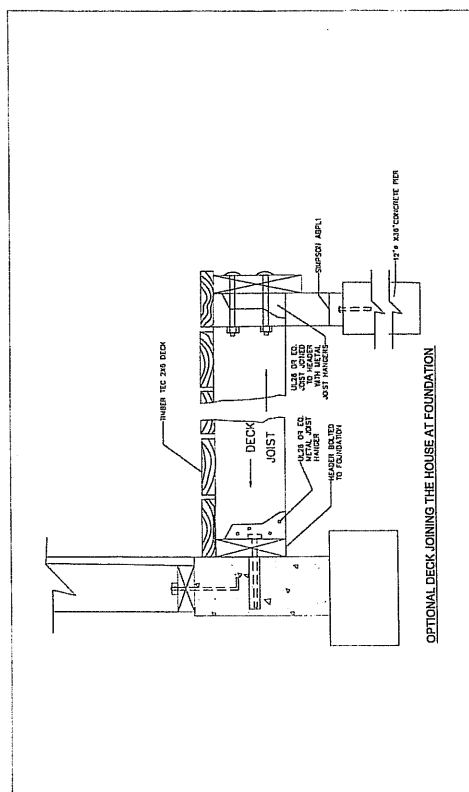
TO THE BEST OF ANY KNOWLEDGE THESE PLANS ARE DRAINED TO COMPLY WITH OWNERS' AND/OR BUILDERS' REQUIREMENTS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ANY REVISIONS TO THE PLANS AFTER PRINTS ARE MADE. ALL WORK SHALL BE DONE AT THE OWNERS' AND/OR BUILDERS' EXPENSE AND AT THE RESPONSIBILITY OF THE CONTRACTOR. THE CONTRACTOR SHALL VERIFY ALL DIMENSIONS IN THE ENCLOSED DRAWINGS. JAVIER MENDOZA DESIGN & DRAFTING IS NOT LIABLE FOR ANY ERRORS OR OMISSIONS IN THE PLANS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PREPARATION OF THIS PLAN TO AVOID MISTAKES IN THE PREPARATION OF THIS PLAN. ANY MISTAKES MADE BY THE CONTRACTOR WILL BE GUARANTEED AGAINST HUMAN ERROR. THE CONTRACTOR OF THE JOB MUST CHECK ALL DIMENSIONS AND OTHER DETAILS PRIOR TO CONSTRUCTION AND BE SOLELY RESPONSIBLE THEREAFTER.

**JM Design
& Drafting Services**
Drawn by,
Javier Mendez
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San Juan Bautista,
CA 95045

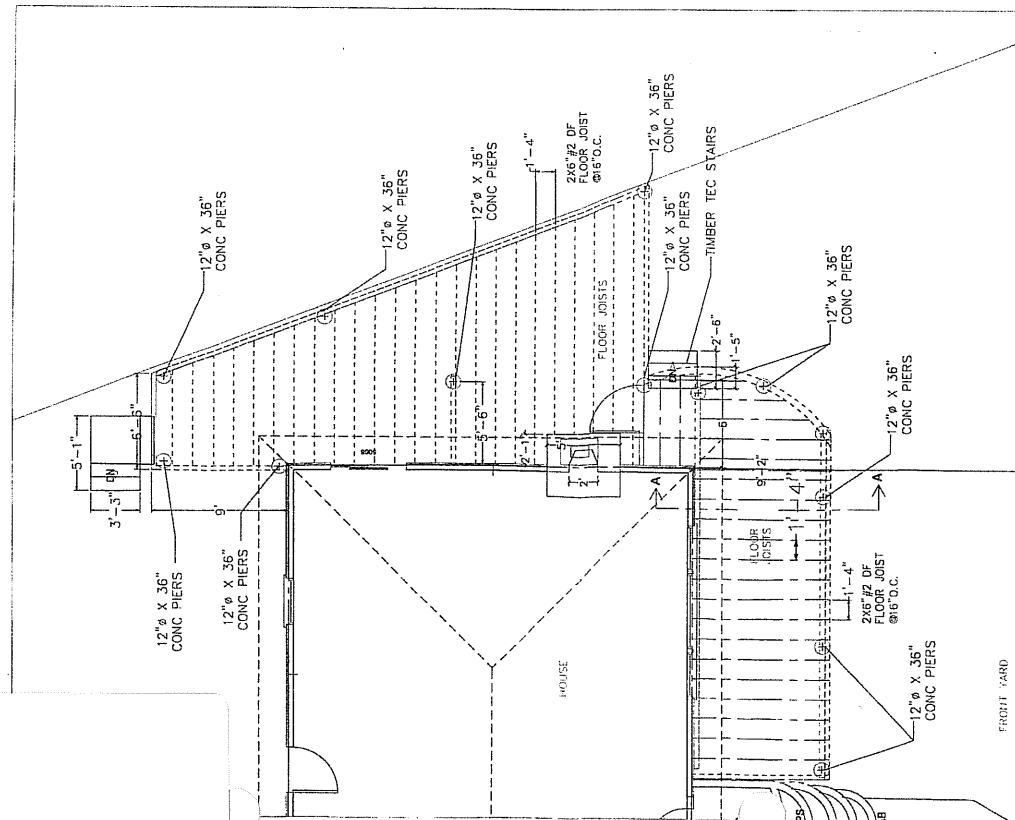
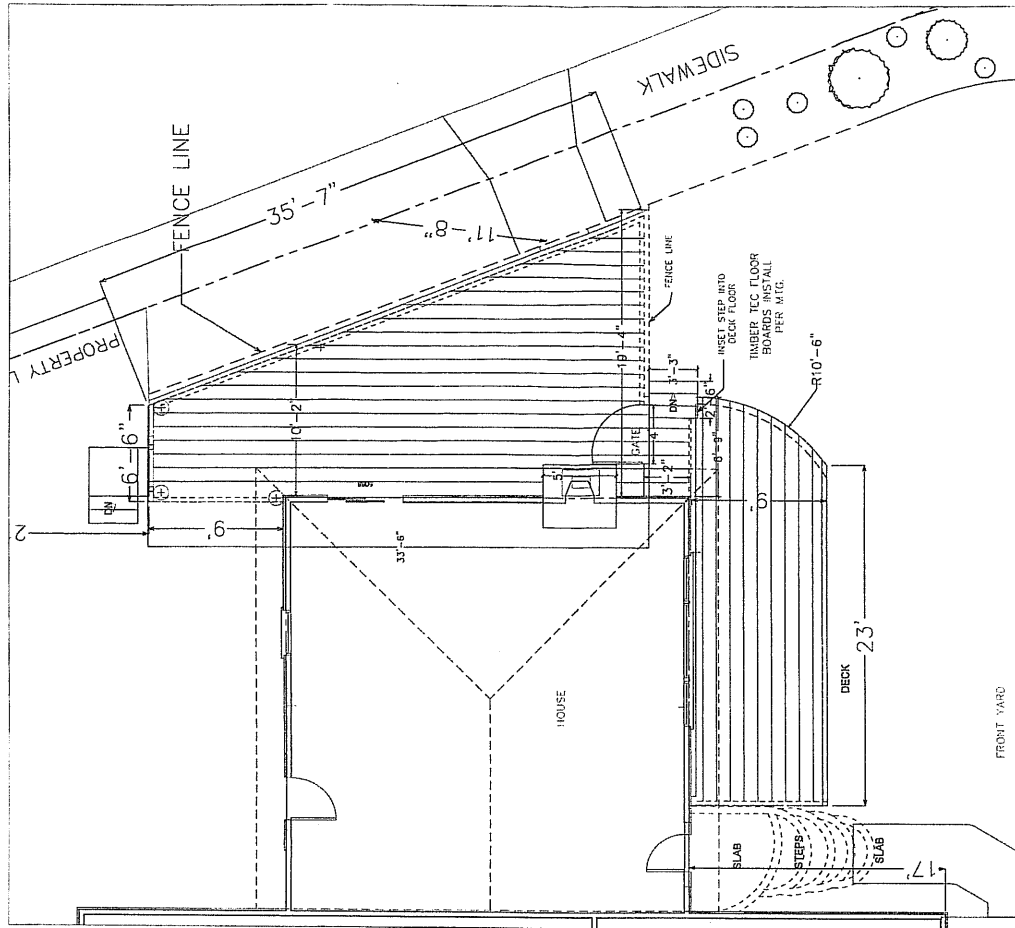
APN# 313-33-009
ADDRESS: 1563 BENTON CT. SUNNYVALE, CA
OWNER: BILL & DAPHNE WEILS
PHONE#: (408) 248-1127

ATTACHMENT

Page 2 of 9



SGALE-1/4/2020

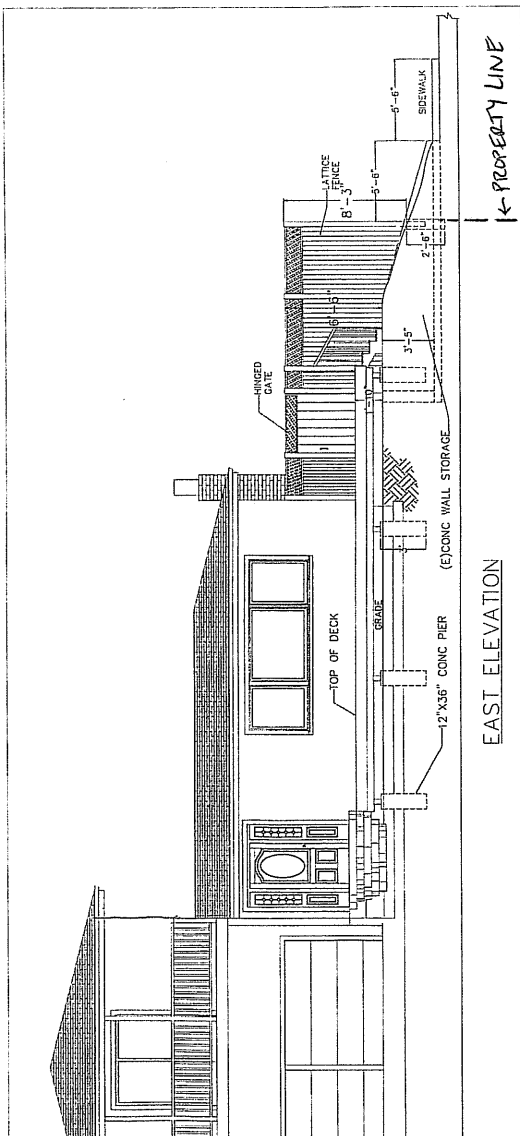
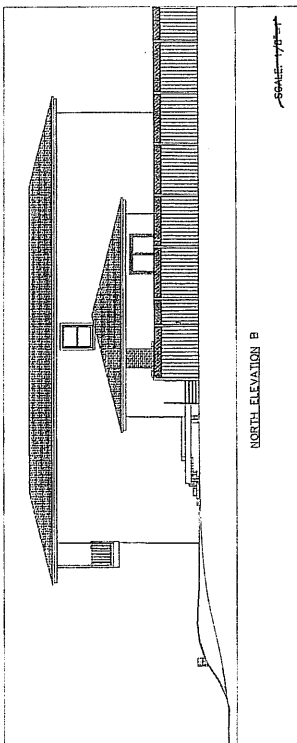
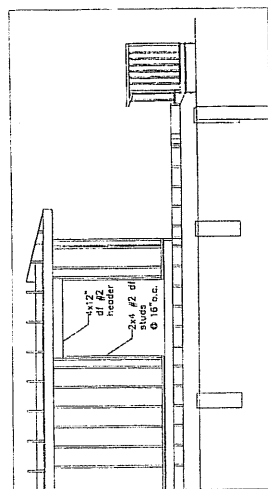
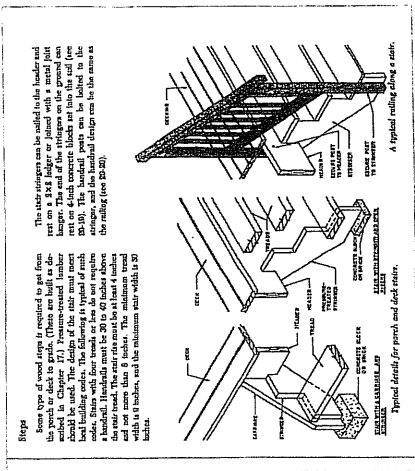


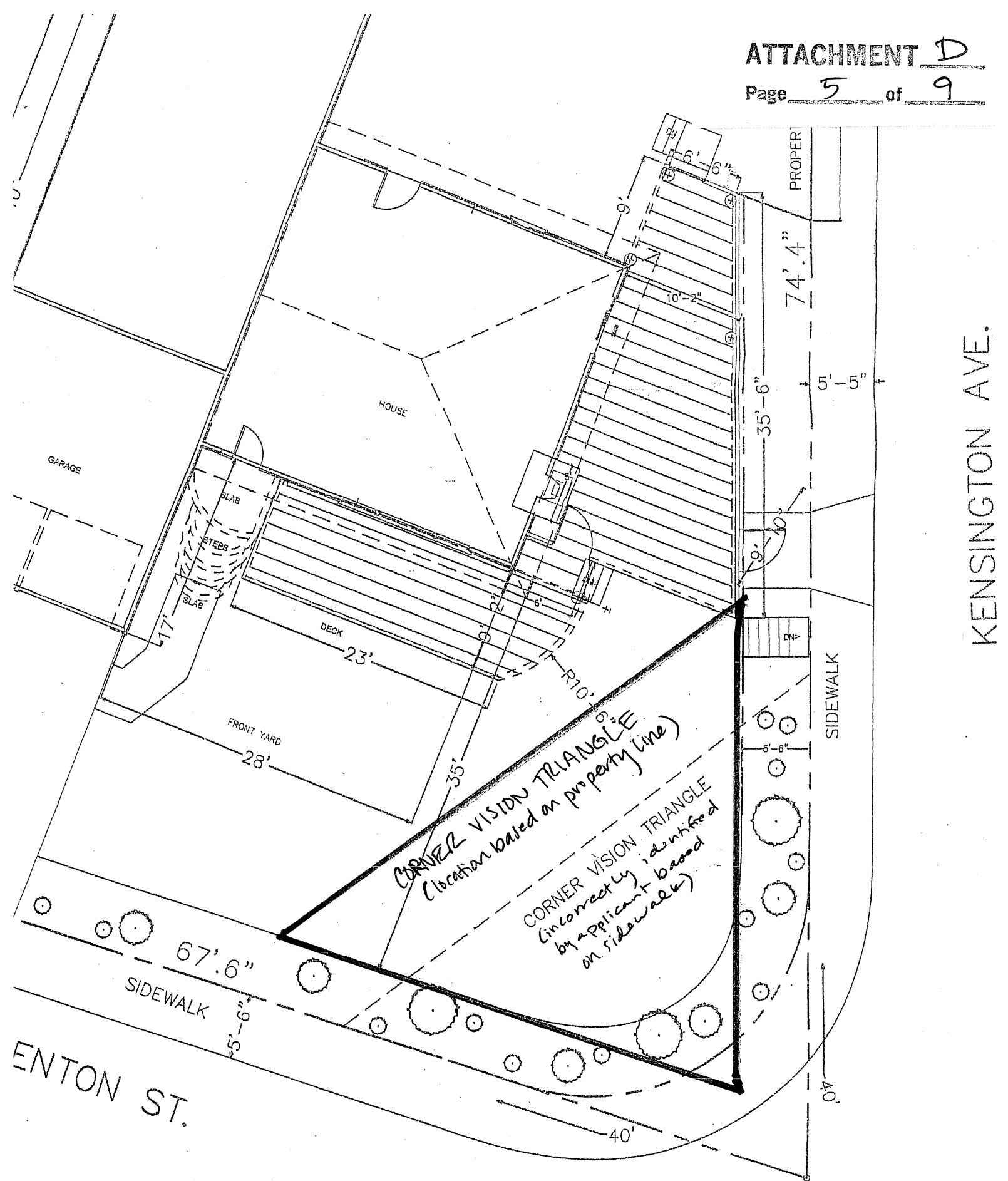
SCALE: 1/4" = 1'-0"

MM Design
& Drafting Services
Drawn by,
Xavier Mendez
Phone: (831) 623-1278
Address:
P.O. Box 38
San Juan Bautista,
CA 95045

EVALUATIONS

ATTACHMENT D
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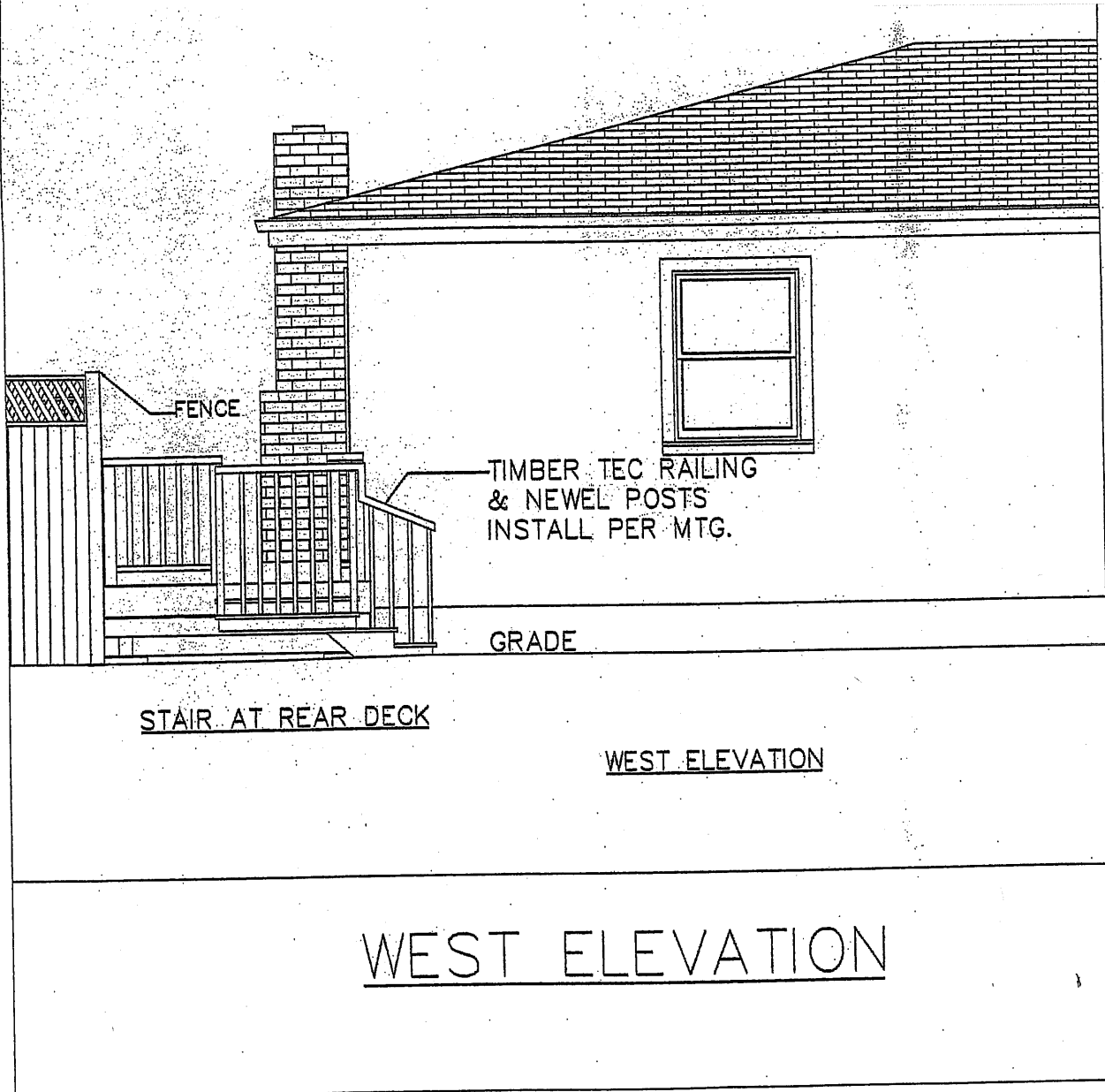
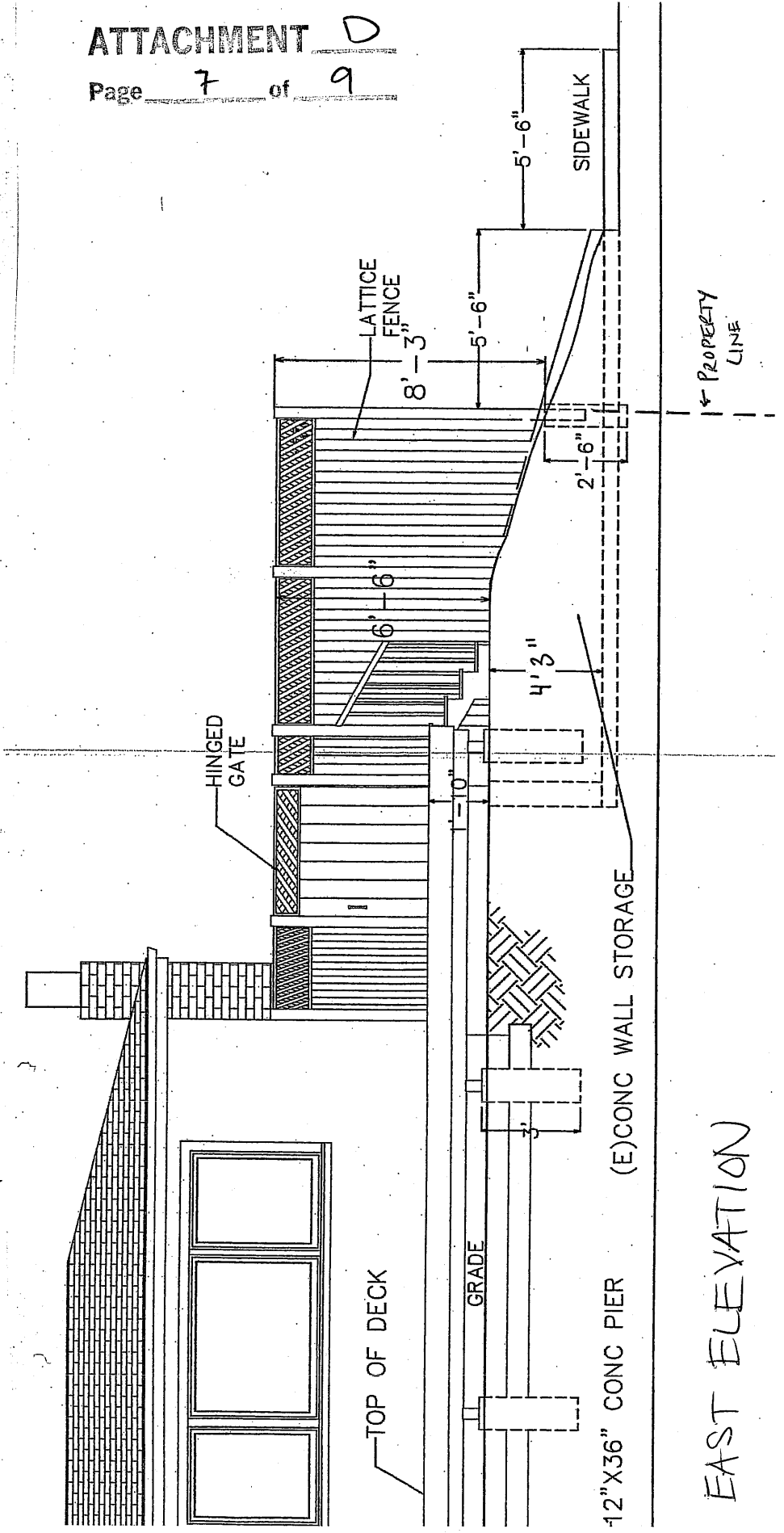
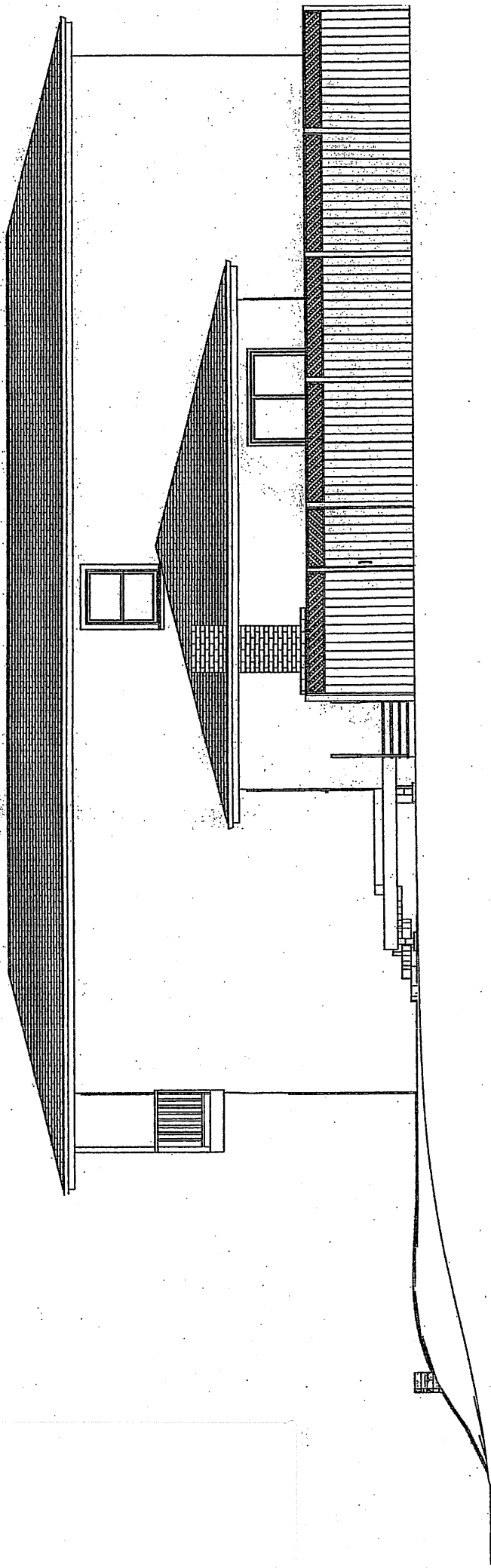


Illustration of grade differentials and heights:

- level of curb = 0'0"
- grade at property line = 2'6"
- grade at rear yard level = 4'3"
- top of deck = 6'11"
- top of fence = 10'9"



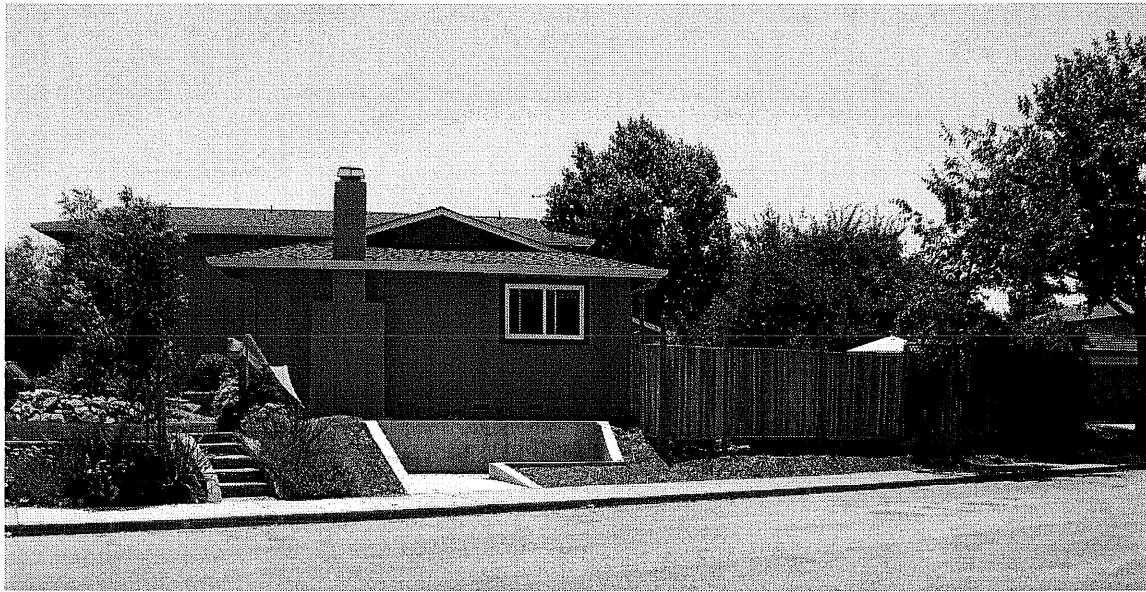
EAST ELEVATION



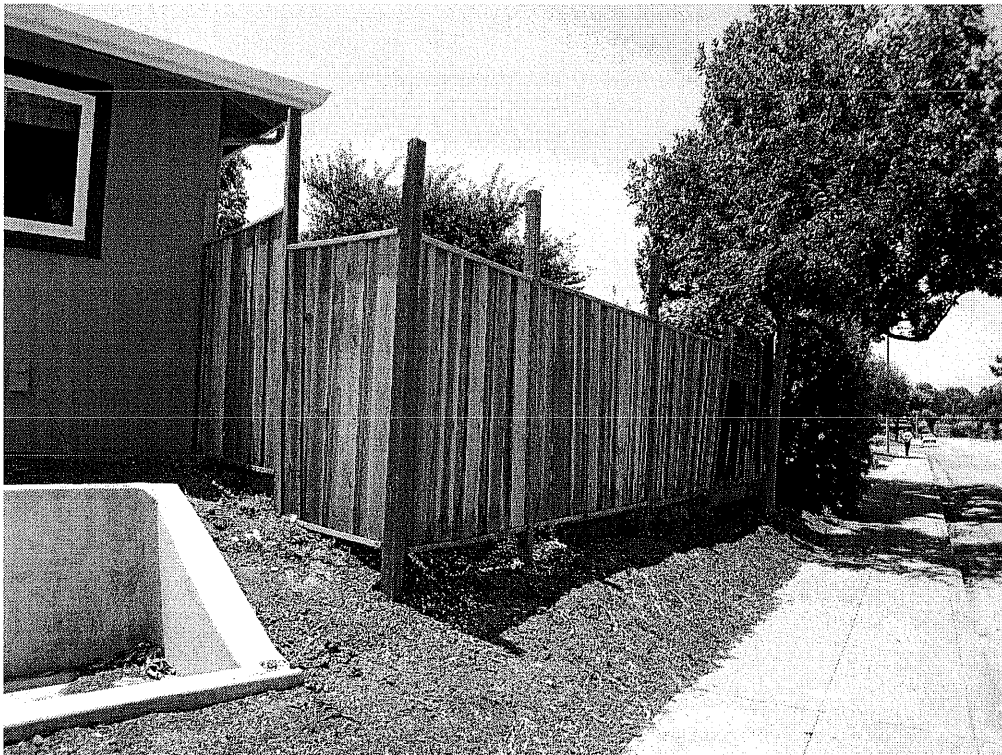
NORTH ELEVATION B

Attachment E

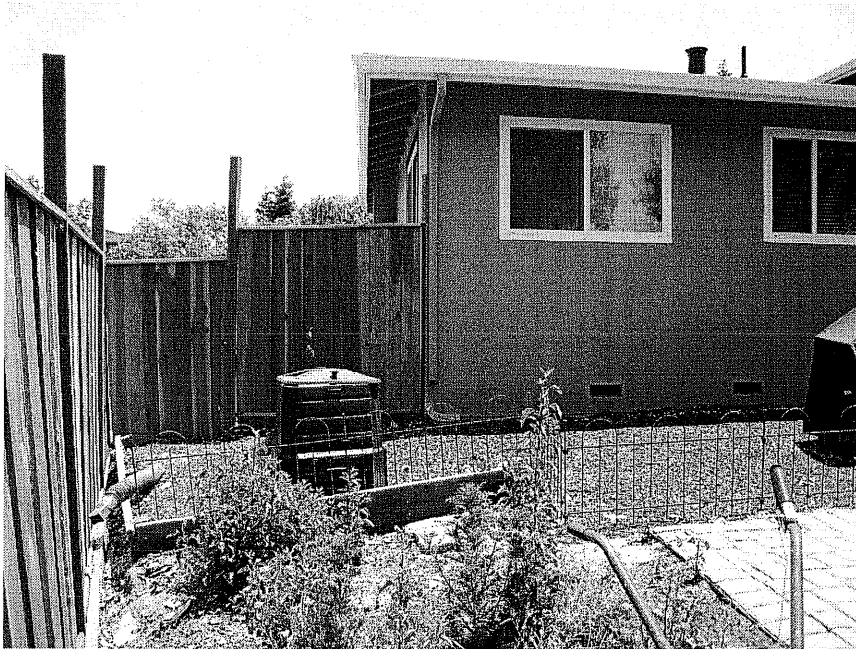
Photographs of the Subject Property



Photograph taken from Kensington Avenue showing the reducible front yard and the existing home, fence, stairs, and concrete storage area.



Photograph taken from Kensington Avenue showing the reducible front yard and the existing fence.



Photograph of the rear yard area behind the existing fence. A portion of the deck would be located in the top left corner of the yard.



Photograph of the existing landscaping in the public right-of-way along the front yard. The applicant proposes to continue this landscaping (but without additional trees) along the reducible yard.

Attachment F

Project Justifications Submitted by the Applicant

Sunnyvale
Variance Justifications

APN #: 313-33-009

William & Daphne Weils
1563 Benton Street
Sunnyvale, CA 94087
(408) 218-0866

1. **Because of the exceptional or extraordinary circumstances or conditions applicable to the property, or use, including size, shape, topography, location or surroundings, the strict application of the ordinance is found to deprive the property owner of privileges enjoyed by other properties in the vicinity and within the same zoning district.**

Variance request: Construction of a raised deck within the nine (9) foot setback in the reducible front yard of a corner lot, request of a zero setback – raised deck to align with the fence, abutting to the property line.

This finding should be reasonably met through the presence of extraordinary conditions – associated with the grade (topography) and shape of the lot - resulting in a lot best described as an “irregular polygon” of atypical, non-symmetric shape, with a severe grade impact along the North facing (reducible front) lot line.

Lot (APN) 313-33-009 is a corner lot that has an atypical, non-symmetric shape with a severe drop in grade of three (3) feet during the last five (5) feet of the North facing property line. This severe drop in grade, combined with the non-symmetric shape is atypical within the 32 unit development (vicinity) which includes properties located on Benton Street (both sides), Kensington Avenue (Southern side), and Lochinvar Avenue (Northern side), attachment of development included – in which the majority of the lots are generally rectangular in shape, square in orientation to the Front Lot line, and of relative consistent grade throughout the property.

Extraordinary Circumstance #1 Topography

1563 Benton Street has a severe drop in grade of three (3) feet during the last five (5) feet along the North property line. Based on existing City of Sunnyvale Municipal code, the drop in grade requires the measurement of deck height used for code to be measured from the adjoining city sidewalk, rather than from the relative grade of the area around the deck.

Even if the deck were built with only six (6) inch piers/supports (in relation to the general grade of the property), Municipal code would place the deck height at three (3) feet six (6) inches and require a building permit to authorize the construction.

Additionally – activation of the Building Permit process requires a supplemental variance review and consideration because the proposed project site is within the reducible front yard.

Other residents in the vicinity and zoning area building a deck within a reducible front yard, with a height of less than 18 inches, could do so without code impact, without a building permit, and without a variance review/consideration – even if they were constructing a deck that extended and abutted to the property line fence. The key focus here (from this resident's point of view) is that the severe drop in grade results in an awkward situation in which the property owner could be deprived of a privilege enjoyed by other properties in vicinity and within the zoning area if a strict application of the ordinance is applied.

Extraordinary Circumstance #2 – Shape (Non-symmetric and irregular)

Non-symmetric consideration #1

East (Front) Lot Line orientation relative to Benton Street. The alignment of the front (East) lot line is parallel to Benton Street, and creates an acute angle (< 90 degrees) in which the South lot line is not square to the East (front) lot line. This non-square (acute angle) condition, causes the overall rear of the lot (as measured from the left side) to be offset from the East (front) line of the lot by a distance of roughly 4'.

Non-symmetric consideration #2

North (Reducible Front) Lot Line orientation relative to Kensington Ave. The intersection of Kensington Ave and Benton Street is not a square intersection. The alignment of the North Lot Line is parallel to Kensington Ave, but is not perpendicular to Benton Street. This situation creates another acute angle condition in which the North lot line is not square to the East (front) Lot line, and in a direction opposite of the acute angled non-square South lot line. This non-square condition causes the overall rear of the lot (as measured from the right side) to be offset from the front line of the lot by a distance of roughly 12'.

Non-symmetric consideration #3

West (Rear) Lot line significantly shorter than East (front) lot line. As a result of the first two non-symmetric considerations - the West (rear) lot line is physically 16' 4" shorter than the East (front) lot line, resulting in a significant narrowing of the property as viewed from the front to the rear of the lot. This is especially apparent along the North lot line for the Reducible Front Yard. As the lot runs from front to rear, the relative total distance from lot line to fixed structure changes from more than 20 feet, to just 9 feet (across a measured distance of 25 feet in length).

Provided the lot shape were symmetric and the rear lot line length more equal to the front lot line, with the average of the Front and Rear lot lines used (59.4 feet), the rear lot line (revised) would increase by a conservative 8' 2" feet (to 59' 4"). This basis of average lot line calculation was developed in accordance with the materials submitted in previous case of similar considerations (City of Sunnyvale Variance Request - case #2004-0566)

Current Front Lot Line – 67' 6"

Current Rear Lot Line – 51' 2"

$(67' 6" + 51' 2" = 118' 8", 118' 8" / 2 = 59' 4"$, revised average rear lot line if more balanced to front lot line).

If the either the orientation of the lot (Non-symmetrical consideration #1 and #2), or an (average balanced) Rear lot line length were different – this lot would have the reasonable shape and orientation to meet the required setback to construct a deck within the reducible front yard, in accordance with applicable city municipal code.

This supporting justification (non-symmetric lot, awkward lot shape) on the basis of lot shape associated with non-symmetric and non-equal lot line length, caused by lot orientation, street alignment, and un-equal front/rear lot line length – is (in part) based on City of Sunnyvale, Planning Commission Report of September 20th, 2004 – Variance Appeal Request – 2004-0566, in which the Planning Commission found in favor of the homeowner that an irregular shaped lot can be **(although not always)** sufficient consideration to meet the requirements of this finding.

<As quoted from the Approved Planning Commission Minutes of Sept 20th, 2004>

Vice Chair Hungerford stated that granting a Variance is difficult and that making the three required Findings is tough to meet. **He agreed with the appellant that the Finding #1 could be met because of the shape of the lot. He stated that the shape of the lots creates an awkward situation and was able to make the required Findings.**

Comm. Fussell concurred with Vice Chair Hungerford and his comments were consistent with his thoughts on the project.

Comm. Babcock did not support the motion. She was unable to make the required Findings. She stated that with 50% of irregular lots in the City, granting a Variance would open an opportunity for property owners with irregular lots to apply for a Variance.

Comm. Sulser supported the motion. He was able to make the required Findings. He concurred with the shape of lot but also the way the structure was built in the irregularly shaped lot.

Chair Moylan supported the motion. He echoed Vice Chair Hungerford and Comm. Sulser in making Finding #1. He stated that making this Finding is easier than making Findings #2 and #3. He commented that one must be careful in granting a Variance but the project does have a special circumstance that needs to be considered. He noted that since there is no fence between the adjacent property, it would be difficult to notice if there were any encroachment. Therefore, the addition is aesthetically harmless. He urged his fellow commissioners to support the motion.
<End Quote>

In support of the finding - when a strict application of the Reducible Front Yard setback (9') is applied to the property – without consideration of the topography (grade) and shape of the property – it does deprive the homeowner of privileges enjoyed by other homeowners in the vicinity.

Alternative Deck Location on the property - A site survey would identify an option to build a deck on the rear of the home. However, in a future project, we would like to submit plans to extend the rear of the home by 10 feet – similar to a home extension/remodel that was accomplished at a similar property within the developed area (1125 Lochinvar Ave). Construction and later removal of a deck in that location would represent a substantial loss of property improvement investment and would again leave the property without a reasonable and useful deck (a net reduced overall property improvement and value). This request is made to ensure greatest economic sensitivity and greatest use and enjoyment of the property.

Alternative Deck Height - A site survey would identify an option to build a deck with a lower overall height from grade in this location. However, the slope of the lot in this area, and alignment to interior access to the home could require the addition of steps from the egress/ingress of the home to the level of a lower deck. The addition of steps creates a more likely scenario of (ongoing exposure to) personal injury liability (trip and fall hazards) than a deck with consistent level and no steps. As well, a deck height which is consistent with the proposed Front Porch increases the usability and access to both areas for ADA considerations (equal height, no ramps, no steps).

Raised Foundation Considerations

Lot (APN) 313-33-009 sits on a sloped/elevated grade area. The North side of the property, which aligns to Kensington Ave, has a slope of nearly three (3) feet – which occurs over a very short distance. In addition to the slope in grade, from the point at which the house foundation is visible (ground level), the one story section of the house is raised an additional three feet above ground level. All of the entry/exits and windows on this section are three feet higher than a house which is not on a raised foundation.

What this means - from the city measured grade (sidewalk, North side of lot) to the lowest point of a entry/exit door (i.e.; door sill) is already six (6) feet in height, despite having an actual measured height from relative area grade of only three (3) feet.

2. **The granting of the Variance will not be materially detrimental to the public welfare or injurious to the property, improvements or uses within the immediate vicinity and within the same zoning district.**

This particular corner lot is aligned to a city boundary. The Northern side of Kensington Avenue is located in the City of Santa Clara, the Southern side of Kensington Avenue is within Sunnyvale, with the city boundary running down the middle of the street. There are no adjoining Sunnyvale residents or Sunnyvale city property on the Northern facing lot line along which the project is to take place.

We believe the approval of these variances would not result in negative impact to the surrounding community, nor injurious to the property because:

- a. The requested variance (overall project) is located on the property side which borders only to the Sunnyvale city (public right of way), and has no adjacent resident properties.
- b. There is no physical encroachment or physical impact to any other resident, or even non-resident property.
- c. There is no impact to privacy of neighboring properties – with the distance to the nearest resident property (1126 Kensington Ave) of 35 feet – and a rear fence height of seven (7) – the residents of 1563 Benton Street, even standing on a three (3) foot elevated deck would have no greater visibility to the neighboring property than a any person walking down the sidewalk in front of the neighboring property
- d. There is no impact to privacy of the general community (enclosed area)
- e. A fence extension to more fully enclose the reducible front yard would completely remove this area of reducible front yard from public visibility.
- f. Neither the raised deck, nor the extended fence line would limit the existing access to the city public right of way.

We believe that this project enhances the overall sense of community and quality of life, in alignment with City (General Plan) statements to preserve and enhance residential areas (General Plan, Housing and Community Revitalization 1999 – 2006)

As such, we have submitted the signature and support of community residents (attachment statement and signatures)

3. **Upon granting of the Variance the intent and purpose of the ordinance will still be served and the recipient of the Variance will not be granted special privileges not enjoyed by other surrounding property owners within the same zoning district.**

As noted within Sunnyvale Municipal Code – Section 19.02.30 – we believe the following Purpose Statements most closely apply to this situation.

- (a) To protect and promote the public health, safety, peace, comfort and general welfare
- (c) To create zoning districts and regulations applicable thereto, and to:
 - (2) Regulate and restrict the location, height and bulk of buildings,
 - (3) Regulate the dimensions and areas of yards and other open spaces, and the density of population, and of commercial and industrial activities,
 - (4) Conserve the values of property, and protect the character and stability of

- residential, commercial and industrial areas, and promote the orderly and beneficial development of such areas,
- (5) Provide adequate light, air, privacy and convenience of access to property, and lessen or avoid congestion in the public streets and highway
 - (7) Prohibit uses, buildings or structures incompatible with the character of such zoning districts,
 - (8) Prevent additions to and alterations or remodeling of existing buildings or structures in such a manner as to avoid the restrictions and limitations lawfully imposed hereunder

We do not believe that a strict application of the ordinance, associated with this project and property would be line with the spirit and intent of the ordinance, and indeed – strict application of the ordinance would deprive the resident of a reasonable enhancement to the quality, value, and comfort of their home (SMC 19.02.30 Items (a) and (c4)).

In this situation, we are seeking to build a deck in the reducible front yard which would increase the peace, comfort, general welfare – and overall enjoyment of property – including the ability to extend the enjoyment of the property to the larger community. In addition, completion of this project would maintain and even increase the overall value of the property – while protecting the character of neighborhood and general construction standards found thorough out the area.

USE PERMIT JUSTIFICATIONS:

APN #: 313-33-009

William & Daphne Weils
1563 Benton Street
Sunnyvale, CA 94087
(408) 218-0866

Use Permit Request – Installation of an eight (8) foot fence (interior height), which would be 11 feet in height as measured from the appropriate exterior grade reference (sidewalk).

The Municipal Code states that at least one of the following two justifications must be met before granting the Use Permit. Illustrating how your project meets at least one of the below criteria will assist the City in reviewing your proposal. Use this sheet or a separate sheet of paper to show how the proposed use:

1) attains the objectives and purposes of the General Plan of the City of Sunnyvale;

In alignment with the objectives and purposes of the General Plan - this project would be desirable and not materially detrimental to the public welfare or injurious to the property, improvements or used within the immediate vicinity and within the zoning district.

We are seeking to improve the usable features of our property by replacing an existing fence with a fence of similar height, and extend the fence line to enclose an area of reducible front yard that was previous open in view to the general public.

We have already undertaken substantial landscaping elements in an effort to improve both the curbside appeal and welcoming of the local community into our property, and this project is a continuation of that effort.

We strongly believe that the welfare of the City of Sunnyvale is best served by families that desire a higher degree of interaction and social connection within the community, and also take active steps to foster an environment in which that interaction/social connection can occur.

Our property and landscaping has been designed in a way to allow for this greater interaction – with features and ability to support “Community” movie nights and daytime block parties.

In this project, we are looking to develop the property to provide a central and enjoyable space for the adults to socialize and interact while community youth can take part in family friendly entertainment. The request to build a fence of suitable height to provide a clear zone of privacy from the nearby school is an integral item.

2) is desirable and not materially detrimental to the public welfare or injurious to the property, improvements or used within the immediate vicinity and within the zoning district.

Lot (APN) 313-33-009 sits on a sloped/elevated grade area. The side of the property which aligns to Kensington Ave has a severe slope of nearly three (3) feet – which occurs over a very short distance. In addition to the slope in grade, from the point at which the house foundation is visible (ground level), the one story section of the house is raised an additional three feet above ground level. All of the entry/exits and windows on this section are three feet higher than a house which is not on a raised foundation.

What this means - from the city measured grade (sidewalk, North side of lot) to the lowest point of a entry/exit door (i.e.; door sill) is already six (6) feet in height. More importantly – a fence that is only six (6) interior height provides just three (3) feet of ‘privacy fencing’ to any of the entry/exits on this section of the home. The first three (3) feet of fence height matches the raised foundation, with only the last three (3) feet of fence height providing three (3) feet of “privacy” and separation from the surrounding area.

Simply stepping out of the rear door of the home (three feet (3) above interior grade) creates no sense of privacy from the street or the public school yard, as anyone stepping out of the rear of the home is fully visible to the street and school from the waist up.

The neighboring property to the North (along the property line where the project is taking place) is a public school – Laurelwood School (Santa Clara). There is privacy impact and quality of life/environment issues to the residents of 1563 Benton Street caused by the School yard and noise levels created during school hours and activities. Having a fence of adequate interior height to provide privacy and separation from the school is an important feature need of this property.

In order to replace the **existing** seven (7) foot fence (physical) and have reasonable personal privacy and separation from the public street and the public school (Laurelwood School) – we would like to have Use Permit Approval to install a fence with an exterior height of 11 feet (from grade), and an interior height of eight (8) feet.

The actual physical fence would be **only eight (8) feet tall** – although, the total measured height from grade (sidewalk) would be 11 feet. This would allow for a full privacy fence of six (6) feet, with an additional two (2) feet of lattice screening to soften the impact of the fence sight line in accordance with Municipal Code and Guidance, and providing an eight (8) foot interior height to compensate for the three (3) foot raised foundation.

We believe we have the strong support of our neighbors and that this project is not injurious or detrimental to the public welfare, and are providing signatures of the local community showing that support. (Community Resident Signature Sheet Attached).

Attachment G

**Signatures of Neighboring Property
Owners Submitted by the Applicant**

APN #: 313-33-009

William & Daphne Weils

1563 Benton Street

Sunnyvale, CA 94087

(408) 218-0866

Page 1 of 1

Community Resident Statement of Support 1563 Benton Street – Variance Request

Raised Deck Zero Setback

- As a local community residents neighboring the home of William and Daphne Weils (1563 Benton Street)
- We have supported and encouraged the ongoing improvement of this property
- We have seen and reviewed the project plans
- We fully support and encourage the installation of a raised deck in the reducible front yard
- Inclusive of the request to place the structure within the 9 foot setback
- With full support of the city to grant a zero setback requirement for this project.

Fence Height

- We fully support the request of a exterior fence height of 11 feet, in order to ensure appropriate privacy to 1563 Benton Street, and attractive finishing of a fence with decorative lattice (top 2 feet) to soften the lines and look of the fence.

Street Address	Signature	Phone Number	
1644 Benton Ct	David A. Giffy	408 984 4994	DAVID GRIFFY
1569 BENTON ST	O'Neal Sutton	408+246-5985	ONEAL SUTTON
1604 Waxwing Ave	S. M. Zwolinski	408 249-7688	PAUL ZWOLINSKI
1587 BENTON ST.	Judi Kidwell	408 243-3419	JUDI KIDWELL
1614 Benton Ct.	Rachel Perez	408 241-8492	RACHEL PEREZ
1126 Kensington Ave	John Muskat	408-296-4111	JOHN MUSKAT
1568 BENTON ST. S.W.A.L.E	Manfred Mueller	408 244-0866	MANFRED MUELLER
1580 Benton St.	Edna Vandervor	408 244-0492	EDNA VANDERVOR
1598 Benton St.	Ginette S. Bales	408-249-2639	GINETTE BALES
1575 Benton St	Francis Keryk	408-243-9872	FRANCIS KERYK
1574 Benton St	Sue Salisbury	408 248 9178	SUE SALSBURY